

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0758
Retail Sales Tax and Withholding Tax
For The Tax Periods: 1994, 1995, 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Retail Sales Tax – Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1.

The Taxpayer disputes the determination that he had a duty to remit the corporation's sales tax.

II. Withholding Tax – Responsible Officer Liability

Authority: IC 6-3-4-8, IC 6-8.1-5-1.

The Taxpayer disputes the determination that he had a duty to remit the corporation's Withholding tax.

STATEMENT OF FACTS

An Indiana corporation incurred liabilities for failure to remit sales and withholding taxes. Taxpayer signed, as Vice President, the corporation's 1994 and 1995 Indiana income tax return (Form IT-20S) and its Indiana Business Tax Application (Form BT-1). The Taxpayer was sent four letters requesting a Power of Attorney. Taxpayer did not respond. Also, a letter was sent on October 6, 1999, attempting to establish a hearing date. A second letter was sent on November 23, 1999 setting the hearing for December 21, 1999 at 10:00 AM. The Taxpayer did not respond to any of the letters and failed to appear for the hearing. More facts will be provided as necessary.

I. Retail Sales Tax – Responsible Officer

DISCUSSION

The proposed sales tax liabilities were issued under authority of IC 6-2.5-9-3, which provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Also, IC 6-8.1-5-1 specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. It is the burden of the taxpayer to prove that the proposed assessment is wrong. Here, Taxpayer has provided the Department with no additional evidence. The Taxpayer has signed the BT-1 and the corporation's 1994 and 1995 IT-20S under the title of vice president.

From these facts, the Department must conclude that Taxpayer was properly named a responsible officer. Therefore, pursuant to IC 6-2.5-9-3, Taxpayer had a duty to remit the sales tax to the Department.

FINDING

The Taxpayer's protest is denied.

II. Withholding Tax – Responsible Officer Liabilities

DISCUSSION

The proposed withholding taxes were assessed against the Taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest." Again, IC 6-8.1-5-1 specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. Consistent with the Department's finding regarding sales tax, the Department also finds Taxpayer, as a responsible officer, had a duty to remit the withholding taxes.

FINDING

The Taxpayer's protest is denied.